

Gouri Shankar Nevatia Vs. Sm. Mrinalini Gupta and ors.

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Court : Kolkata

Decided On : Jan-27-1971

Reported in : AIR1973Cal410

Judge : P.N. Mookerjee and ;Amiya Kumar Mookerji, JJ.

Acts : [West Bengal Premises Tenancy Act, 1956](#) - Section 17(1) and 17(3)

Appeal No. : Civil Revn. Case No. 3893 of 1970

Appellant : Gouri Shankar Nevatia

Respondent : Sm. Mrinalini Gupta and ors.

Advocate for Def. : Noni Coomar Chakravarti and ;Dilip Kumar Halidar, Adv.

Advocate for Pet/Ap. : Manohar Chatterjee, Adv.

Judgement :

ORDER

1. This Rule is directed against an order of the learned trial Judge, allowing the opposite parties' application under Section 17 (3) of the [West Bengal Premises Tenancy Act, 1956](#), striking out the petitioner's defence in the connected suit for ejection.

2. The opposite parties' application under Section 17 (3) of the West Bengal Premises Tenancy Act was opposed by the petitioner on several grounds.

3. In the first place, it was contended that the instant suit, not being a suit for ejection on the ground of default, Section 17 (3) had no application to this case. This objection was rejected by the learned trial Judge and, in our opinion, rightly. A look at the language of Section 17 (1) would be enough to convince one that it applies in all cases of ejection on grounds, contemplated by Section 13 of the Act, the ground of default being only one of those grounds. In that context, Section 17 (3) would be available in suits for ejection on grounds, mentioned in Section 13 including, of course, the ground of default and its application would not be confined only to suits for ejection on the ground of default.

4. It was urged next on behalf of the petitioner that he was not in default, as the defaults, found by the learned trial Judge, namely, for June, July, August and October, 1968, were all instances of deposits with the Rent Controller of the requisite rent within the period, prescribed for such deposit in Section 21. The learned trial

Judge has, however, taken the view that those deposits would be late deposits under the law as, for purposes of Section 17, the deposit of rent for a particular month would have to be made within 15 days of the next succeeding month, as mentioned in the second part of Section 17 (1), which would apply to the deposits in question.

5. In our view, the learned trial Judge is right on the above question too inasmuch as the time limit for such monthly deposits under Section 17 (1) has not been touched or interfered with by the amendment, which has made deposits with the Rent Controller available for purposes of Section 17 (1) of the Act. [Vide, in this connection, *Mahasukhari Ramrich Pal v. Kishore Churn Law*, 1LR (1969) 2 Cal 6 at p. 9].

6. It was next contended in support of this Rule that the instant case being one where there were no arrears at the time of service of summons and consequently, the first part of Section 17 (1) not being applicable, the second part of the said section, under which the above deposits are held to be invalid, would not be attracted. On this aspect of the matter, reliance was placed on a decision of Bijayesh Mukharji, J., reported in *Harendra Nath Chatterjee v. Sailendra Krishna Saha*, : AIR1967Cal185 . That decision, however, would be opposed to the Special Bench decision of this Court, reported in *Siddheswar Paul v. Prakash Chandra Dutta*, : AIR1964Cal105 where the majority judgment, which would prevail in law, upheld and confirmed an adverse order against the tenant, who was in a similar position as the petitioner before us, under Section 17 (3) of the West Bengal Premises Tenancy Act. That Special Bench decision, therefore, would be against the petitioner's present contention, -- at least, by implication, -- and this contention also must, therefore, fail.

7. Lastly, the petitioner argued that although he has been found to be a defaulter under Section 17 on four occasions, this being the first occasion, when he has had to seek relief under the provisions of that section in Court, the amended proviso to Section 17 (4) would not hit him and he would be entitled to relief under the main part of Section 17 (4).

8. The difficulty, however, in the way of the petitioner, so far as this aspect of the matter is concerned, would be that, in the instant case, there was no application by him under Section 17 (2) of the above Act and in the absence of such an application, -- and there being obvious non-compliance with Section 17 (1), -- he would not be entitled to relief under Section 17 (4) apart from the proviso.

9. In the above view we would discharge this Rule.

10. There will, however, be no order for costs.